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Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES E. PIETRANGELO, II,
Petitioner,

v.

UNITED STATES SENATE,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did at least thirty-two Senators violate Art. I, § 3's Oath Clause, and Art. II, § 4's Duty to Convict and Remove Clause, of the Constitution, by voting "not guilty" as to the Impeachment Articles in President Clinton's Impeachment Trial even though those Senators admittedly and as a matter of public record thought that President Clinton committed the acts charged in those Articles?

2. Did all of the Senators violate Art. II, § 4's Duty to Convict and Remove Clause, of the Constitution, by ordering, adjudging, and communicating a judgment of acquittal to the House of Representatives in President Clinton's Impeachment Trial even though two-thirds of those Senators thought that President Clinton committed the acts charged in the Impeachment Articles?

PARTIES TO THE PROCEEDING

Petitioner

James E. Pietrangelo, II.

Respondents

Spencer Abraham, Daniel K. Akaka, Wayne Allard, John Ashcroft, Max Baucus, Evan Bayh, Robert F. Bennett, Joseph R. Biden, Jr., Jeff Bingaman, Christopher S. Bond, Barbara Boxer, John B. Breaux, Sam Brownback, Richard H. Bryan, Jim Bunning, Conrad R. Burns, Robert C. Byrd, Ben Nighthorse Campbell, John H. Chafee, Max Cleland, Thad Cochran, Susan M. Collins, Kent Conrad, Paul Coverdell, Larry E. Craig, Michael D. Crapo, Thomas A. Daschle, Mike DeWine, Christopher J. Dodd, Pete V. Domenici, Byron L. Dorgan, Richard J. Durbin, John Edwards, Michael B. Enzi, Russell D. Feingold, Dianne Feinstein, Peter Fitzgerald, Bill Frist, Slade Gorton, Bob Graham, Phil Gramm, Rod Grams, Charles E. Grassley, Judd Gregg, Chuck Hagel, Tom Harkin, Orrin G. Hatch, Jesse Helms, Ernest F. Hollings, Y. Tim Hutchinson, Kay Bailey Hutchison, James M. Inhofe, Daniel K. Inouye, James M. Jeffords, Tim Johnson, Edward M. Kennedy, Robert J. Kerrey, John F. Kerry, Herb Kohl, John Kyl, Mary L. Landrieu, Frank R. Lautenberg, Patrick J. Leahy, Carl Levin, Joseph I. Lieberman, Blanche Lincoln, Trent Lott, Richard G. Lugar, Connie Mack, John McCain, Mitch McConnell, Barbara A. Mikulski, Daniel Patrick Moynihan, Frank H. Murkowski, Patty Murray, Don Nickles, Jack Reed, Harry Reid, Charles S. Robb, Pat Roberts, John D. Rockefeller, IV, William V. Roth, Jr., Rick Santorum, Paul S. Sarbanes, Charles E. Schumer, Jeff Sessions, Richard C. Shelby, Bob Smith, Gordon H. Smith, Olympia J. Snowe, Arlen Specter, Ted Stevens, Craig Thomas, Fred Thompson, Strom Thurmond, Robert G. Torricelli, George Voinovich, John W. Warner, Paul D. Wellstone, and Ron Wyden.

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PETITION FOR A WRIT OF CERTIORARI

James E. Pietrangelo, II respectfully petitions for a writ of certiorari to review his entire case as well as the order of the Court of Appeals.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is unreported, but reproduced at Appendix A. The opinion of the District Court is also unreported, but also reproduced at Appendix B.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its Memorandum Opinion on March 31, 2000. This Petition for Writ of Certiorari is filed within 90 days of the issuance of the Memorandum Opinion. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1254(1) and 2106. Notice of service required by Supreme Court Rule 29.4(a) has been made.

CONSTITUTIONAL PROVISIONS

U.S. Const., art. I, § 3, cl. 6
Impeachment Clause

. . . When sitting for that Purpose [Impeachment Trial], they [the Senate] shall be on Oath or Affirmation.

* * * * *

U.S. Const., art. II, § 4
Impeachment Clause

The President, Vice President, and all Civil Officers of the

United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

STATEMENT OF THE CASE

This is a simple case, with undisputed facts. During the Impeachment Trial of President William Jefferson Clinton, thirty-two Senators voted "not guilty" even though they publicly and as a matter of record believed that President Clinton was guilty as to the Impeachment Articles. The Senators' declared rationale for so voting was that they believed that President Clinton's acts, though charged in the Impeachment Articles and admitted, were not impeachable acts, and that the Senate had the power to censure him only and not remove him. Consequently, although two-thirds of the Senate (those who voted "guilty" plus the thirty-two) believed that President Clinton was guilty of the Impeachment Articles, the Senate communicated a judgment of acquittal to the House of Representatives after voting.

On March 4, 1999, Pietrangelo filed a complaint against the entire Senate individually and together, seeking a declaration that the thirty-two Senators had violated Art. I, § 3's Oath Clause by voting "not guilty" when they in fact believed that President Clinton was guilty, and that all the Senators had violated Art. II, § 4's Duty to Convict and Remove Clause, by ordering, adjudging, and communicating a judgment of acquittal to the House of Representatives even though two-thirds of the Senate believed that President Clinton was guilty. The District Court had jurisdiction over the original action pursuant to 28 U.S.C. §§1331, 1337, and 2201(a), because the case presented a federal question arising under the Impeachment Clauses.

Although not one of the Senators filed an answer to or motion to dismiss the complaint, or even so much as entered an

appearance in the action, the District Court (a Clinton appointee), *sua sponte*, and contrary to *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 511, n. 17 (1975), entered an order on March 18, 1999, dismissing Pietrangelo's suit on the basis of Speech or Debate Clause immunity. Appendix B. The District Court held that Speech or Debate Clause immunity was applicable to the Senators' actions, despite the fact that such actions directly violated other, superior constitutional clauses, and despite the fact that the precedents of this Court cited by the District Court do not address and do not apply to such violations.

Pietrangelo filed a timely appeal with the Court of Appeals for the Sixth Circuit. He also timely filed a petition for certiorari before judgment with this Court, which was denied on June 14, 1999. On March 31, 2000, a full year after notice of appeal despite a motion to expedite by Pietrangelo pursuant to *Eastland*, *supra*, the Court of Appeals affirmed the District Court's judgment in a Memorandum Opinion which incorporated the reasoning of the District Court's judgment, and thus was deficient for the same reasons. Appendix A.

ARGUMENTS FOR GRANTING THE WRIT

It is clear from this Court's prior decisions, from the intent and design of the Founders, and from the principles of our Democracy, that the Senators violated Art. I, § 3, cl. 6, and Art. II, § 4, of the Constitution, by their Impeachment Trial actions, and that these violations are not shielded by Speech or Debate Clause immunity. It is equally clear that these violations have done violent, irreparable harm to our constitutional system, and will continue to inflict such harm until and unless they are addressed and remedied by this Court.

ARGUMENT 1

The United States Court of Appeals for the Sixth Circuit has decided important questions of federal law that have not been, but should be decided by this Court, namely whether Senators in a presidential impeachment trial may vote "not guilty" even though they admittedly and as a matter of record believe the president to be guilty of the acts charged in the impeachment articles, and whether the Senate as a whole may refuse to convict and remove the president even though two-thirds of the Senators concur in his guilt.

As will be explained, *infra*, nothing less than the very foundation of our democracy is at stake in this case. Whether the Constitution is "words we live by" or "words we laught at" has been put to the question by the events arising from President Clinton's crimes, and that question now cries out for an affirmative answer. However, because addressing the Senators' violations would necessarily cause embarrassment to the two other branches of government, and to the Chief Justice of this Court, and necessarily require the federal judiciary to take action rather than mere words against a man who (by virtue of his being a rapist, perjurer, obstructer of justice, drug-user, and draft-dodger, among other things) has demonstrated that he will do anything to protect himself (including destroying this Country), the District Court and Court of Appeals, respectfully, did not have the fortitude to provide an affirmative answer. Instead, they simply ignored the actual issue involved, or more accurately, pretended that it did not exist, and decided the case based on the most readily available but clearly inapplicable cover–Speech or Debate Clause immunity–hoping that the matter would go away.

So daunting a responsibility was addressing President Clinton's crimes that both the District Court and Court of Appeals tripped over themselves escaping it. Giving, *arguendo*, the District Court the benefit of the doubt as to its motives (which is not easy to do given the special treatment that President Clinton seems to invite from his appointees), it jettisoned the case like a plague-carrying barrel of meat on a ship at sea, before the Respondent Senators had even made an appearance, and without even mentioning Art. I, § 3, cl. 6 or Art. II, § 4–much less discussing their applicability–in its opinion. The Court of Appeals Panel was certainly less reactionary, but likewise assiduously avoided the issue of Art. I, § 3, cl. 6 and Art. II, § 4, by wholesale adopting the District Court's "reasoning." In fact, the Court of Appeals Panel never breathed a *whisper* in its Memorandum Opinion about the Oath or Duty to Convict and Remove Clauses, despite the fact that Pietrangelo filed a sixty-eight page brief with *numerous* direct quotations from the *Founders* themselves regarding the Clauses' applicability.

Only this Court appears to be capable of actually addressing the issue presented in this case, to whom the lower courts have passed it. The issue is of such exceptional national importance that, like a father who has encountered danger with his sons, to whom he has preached courage and doing right in safety but must now demonstrate his practice in peril, this Court cannot fail to meet its test of courage and not embrace the Oath and Duty to Convict and Remove violations, lest it lose face and faith forever with the lower courts and this Nation's people. Already, government corruption and lawlessness, and general societal lawlessness, are increasing, and certainly the seeds of disrespect for the law that were planted in the minds of our young people who saw a president avoid and flaunt punishment for his crimes will naturally bear fruit in the future unless supplanted.

Moreover, out of sheer practicality, this Court will have to once and for all decide the fundamental question involved in this case. As the Founders long ago warned when they established this government, justice delayed is justice denied, especially where the president is concerned. Numerous lawsuits, including any indictment of President Clinton after he leaves office, and the Privacy Act case before Judge Royce Lamberth, will have been spawned and in need of determination before this is done and over. There will be no just and coherent resolution to any of them if the unique guidance of this Court is not provided swiftly.

ARGUMENT 2

The Court of Appeals has decided these important questions contrary to this Court's entire body of precedent regarding rule of law and constitutional interpretation, including *Kilbourn v. Thompson*, *Langford v. U.S.*, *Marbury v. Madison*, *Nixon v. U.S.*, *Powell v. McCormack*, and *U.S. v. Lee*, as well as contrary to the intent and design of the Founders and the basic principles of our Democracy.

While their dispositive reasoning was all but muddy, the District Court and Court of Appeals' ulterior reasons for not addressing Art. I, § 3, cl. 6 and Art. II, § 4, and the numerous Founder quotations cited by Pietrangelo, is crystal clear. So crystal clear, it is both embarrassing and unbelievable at the same time. The District Court and Court of Appeals did not address those authorities because they could not have refuted them, and would have had to have granted Pietrangelo his declaration, had they addressed them. Pietrangelo, though a mere "citizen," is simply correct that the thirty-two Senators could not choose to censure President Clinton instead of removing him, by voting "not guilty"

even though they believed him guilty, and Pietrangelo is simply correct that the Senate could not communicate a judgment of acquittal to the House of Representatives when two-thirds concurred in President Clinton's guilt.

Art. I, § 3, cl. 6 states that the Senators "*shall* be on Oath when sitting for Impeachment." "Shall" is a word of command. As Governeur Morris, who *introduced* the Oath Clause into the Constitution during the Constitutional Convention, stated, the Oath was designed to prevent Senators from "untruly" saying that the president was guilty of crimes or facts, or not guilty. Records of the Federal Convention, 2:550; Madison, 8 September. Such a mechanism was necessary to the creation and maintenance of a functional Executive, so that, on the one hand, the Senate could not allow the president to be above the law, like George III, by countenancing his crimes (the very thing for which the Founders had fought the Revolutionary War), but nor, on the other hand, could the Senate exercise "legislative tyranny" over the president by throwing him out under the "influence of heat and faction." *Id.*

The following passage unequivocally reveals the crucial balance that the Oath was designed to preserve:

> Col. Mason. No point is or more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice? * * *
>
> * * *
>
> Docr. Franklin[.] * * * What was the practice before this in cases where the chief Magistrate rendered himself obnoxious? Why recourse was had to assassination in wch. he was

not only deprived of his life but of the opportunity of vindicating his character. It wd. be the best way therefore to provide in the Constitution for the regular punishment of the Executive when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused.

* * *

Mr. Madison–thought it indispensable that some provision should be made for defending the Community agst the incapacity, negligence or perfidy of the chief Magistrate. * * *

* * *

Mr. Gerry urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here that the chief Magistrate could do no wrong.

* * *

Mr. Randolph. The propriety of impeachments was a favorite principle with him; Guilt wherever found ought to be punished. * * *

* * *

Mr. Govr. Morris[.] * * * This Magistrate is not the King but the prime-Minister. The people are the King. When we make him amenable to Justice however we should take care to provide

> some mode that will not make him dependent on the Legislature.

Records of the Federal Convention, 2:64; Madison, 20 July.

Under this mode for keeping the president accountable but independent, then, the Founders undeniably intended that Senators abide by their Oaths to vote "guilty" if they believe a president guilty, or conversely, to vote "not guilty" if they believe him not guilty, otherwise a guilty president would not be removed or an innocent one would be–the very thing that the Founders explicitly rejected.

In fact, for the Founders, the impeachment trial, "though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts." Thomas Jefferson, *Jefferson's Manual of Parliamentary Practice and Rules of the House of Representatives*, Sec. 53, § 619. "The same rules of evidence, the same legal notions of crimes and punishments, prevail[]; for impeachments are not framed to alter the law, but to carry it into more effectual execution against too powerful delinquents." *Id.* As this Court has stated, in a criminal prosecution, a jury's verdict "must be based upon the evidence." *Turner v. Louisiana*, 379 U.S. 466, 472 (1965). "It is the function of the jury to determine the guilt or innocence of the accused according to the evidence." *Sparf and Hansen v. United States*, 156 U.S. 51, 101 (1895). "Public and private safety alike would be in peril, if the principle be established that juries in criminal cases may, of right, disregard the law as expounded to them by the court and become a law unto themselves. * * * When that occurs our government will cease to be a government of laws, and become a government of men. Liberty regulated by law is the underlying principle of our institutions." *Id.* at 101-103.

"It would, indeed, be a monstrous anomaly, that the highest officers might be convicted of the worst crimes, without any sanction being interposed against the exercise of the most vindictive passions; while the humblest individual has a right to demand an oath of fidelity from those, who are his peers, and his triors. In England, however, upon the trial of impeachments, the house of lords are not under oath; but only make a declaration upon their honour. This is a strange anomaly, as in all civil and criminal trials by a jury, the jurors are under oath; and there seems no reason, why a sanction equally obligatory upon the consciences of the triors should not exist in trials for capital or other offences before every other tribunal. What is there in the honour of a peer, which necessarily raises it above the honour of a commoner? The anomaly is rendered still more glaring by the fact, that a peer cannot give testimony, as a witness, except on oath; for, here, his honour is not trusted. * * * Why should the obligation of a judge be less solemn, than the obligation of a witness? The truth is, that it is a privilege of power, conceded in barbarous times, and founded on feudal sovereignty, more than on justice, or principle."

"In respect to the impeachment of the president, and vice president, it may be remarked, that they are, upon motives of high state policy, made liable to impeachment, while they yet remain in office. In England the constitutional maxim is, that the king can do no wrong. His ministers and advisers may be impeached and punished; but he is, by his prerogative, placed above all personal amenability to the laws for his acts. * * * The provision in the constitution of the United States, on the other hand, holds out a deep and immediate responsibility, as a check upon arbitrary power; and compels the chief magistrate, as well as the humblest citizen, to bend to the majesty of the laws." Joseph Story, *Commentaries on the Constitution*, vol. 2, §§ 774, 811 (1833).

"In England, the Lords, who try impeachments, declare solemnly, upon honour, whether the persons impeached be guilty

or not. But here the senators are on oath. This is a very happy security." Debate in North Carolina Ratifying Convention, Archibald Maclaine, 25 July 1788.

Founder and Supreme Court Justice Story specifically stated that the Oath of Senators as triors in an impeachment trial is the same oath or "sworn duty to apply the law to the facts of the particular case," *Lockhart v. McCree*, 476 U.S. 162, 184 (1986), which jurors in a criminal trial take, and which a "juror would no doubt . . . violate if he were not impartial on the question of guilt." *Adams v. Texas*, 448 U.S. 38, 44 (1980):

> The remaining parts of the clause of the constitution now under consideration will not require an elaborate commentary. The first is, that the senate, when sitting as a court of impeachment, "shall be on oath or affirmation"; a provision, which, as it appeals to the conscience and integrity of the members by the same sanctions, which apply to judges and jurors, who sit in other trials, will commend itself to all persons, who deem the highest trusts, rights, and duties, worthy of the same protection and security, at least, as those of the humblest order. * * * . . . in all civil and criminal trials by a jury, the jurors are under oath; and there seems no reason, why a sanction equally obligatory upon the consciences of the triors should not exist in trials for capital or other offences before every other tribunal.

Story, *Commentaries*, vol. 2, § 774.

Moreover, the Founders clearly intended the Senators' Oath to be enforced by the Judiciary. "The Senate is obliged to receive and decide on the charge, and to the strongest moral

obligations is added that of an oath or affirmation." William Rawle, *A View of the Constitution of the United States*, 210-19 (2d ed. 1829). "It has been objected by some, that the President is in no danger from a trial by the Senate, because he does nothing without its concurrence. * * * The chief justice, we ought to presume, would not countenance a collusion." North Carolina Debate, Maclaine. Simply put, "[W]hen trying impeachments: The Members must be on oath[.]" *Nixon v. United States*, 506 U.S. 224, 229 (1993).

That Senators may not admittedly untruly vote "not guilty" in a presidential impeachment trial, is confirmed by the rest of the impeachment mechanism as set forth in the Constitution. Under Art. I, § 2, cl. 5, of the Constitution, the House of Representatives "shall have the sole power of impeachment." "[T]he word 'sole' indicates that this authority is reposed in the [House of Representatives] and nowhere else." *Nixon*, 506 U.S. at 229. "The jurisdiction to impeach is placed, where it should be, in the possession and power of the immediate representatives of the people." Story, *Commentaries*, vol. 2, § 810. "The branch of the legislature which represents the people, therefore, brings the charge," Rawle, *View*, 210-19, because they alone "know the feelings of the people at large, and will be ready enough to make complaints." Debate in North Carolina Ratifying Convention, James Iredell, 24 July 1788.

This "safeguard" of reposing the right to accuse in the House was created by the Founders to avoid the "grave risk that the Senate will usurp judicial power," *Nixon*, 506 U.S. at 236, and "is one of the greatest securities for a due execution of all public offices." North Carolina Debate, Iredell. Once the Senate receives the accusation, they must "preserve[] unawed and uninfluenced the necessary impartiality between [the] individual accused, and the representatives of the people, his accusers[.]" Alexander Hamilton, *Federalist No. 65*, 439-445, 7 March 1788.

In other words, the Senate tries the president for the acts charged and, if they find that he committed the acts, must remove him from office. *Langford v. United States*, 101 U.S. 341, 343 (1879).

If the Senate could nullify the House's accusations by saying that the Senate did not think that such accusations should have been brought in the first place, or that such accusations though true do not warrant removal, the Senate would then be invading the sole power of the House to impeach, the power of the people to complain. "It is not otherwise to be supposed that the constitution could intend to enable the representatives of the people [the Senate] to substitute their *will* to that of their constituents." Hamilton, *Federalist No. 78*, 524-525, 28 May 1788 (emphasis in original). The Senate would also be violating Art. II, § 4, which states that the president *shall* be removed on impeachment and conviction for treason, bribery, or other high crimes and misdemeanors.

It simply is impossible, given the common Founder theme of the impeachment trial as determining a president's "guilt or innocence" in the *same* way that an accused's guilt or innocence in a common criminal trial is determined, for the Senate's duty to be construed as judging whether the conduct warrants removal, rather than as judging whether the conduct occurred as charged. Again, not only may a jury not determine what charges may be brought, *Sparf and Hansen*, *supra*, but, to allow the Senate to choose what charges warrant removal would literally allow them discretion to decide whether a president's *treason* or *bribery* warrants removal as well, which no serious scholar of the Founders could even suggest. If "guilty according to the evidence" is good enough for the people, it certainly is good enough for the president and senate.

The evidence is clear that the Founders trusted the people's immediate representatives, who have the shortest term and are closest to the people themselves, and thus are the more

accountable, rather than the Senate, who are more akin to nobility, to determine which accusations are frivolous. Thus the Senators could not vote untruly that President Clinton was "not guilty."

In contrast, the Respondent Senators, and their defenders, the District Court and Court of Appeals, assert that the Senate's admitted invasion of the House's sole power is protected by Speech or Debate Clause immunity merely because the Senate committed it–regardless of the violation of another constitutional clause. First, a fact which both the Senators and their defenders forget to mention, this Court has never applied Speech or Debate Clause immunity to this situation, since this situation has never arisen before. In fact, this Court's leading Speech or Debate Clause decisions have specifically left a situation like this open for review. *Kilbourn v. Thompson*, 103 U.S. 168, 204-205 (1881), and *Powell v. McCormack*, 395 U.S. 486, 506, n. 26 (1969). Second, the mere fact that this case involves a constitutional violation that is a legislative act does not automatically immunize it from review, as the Founders and this Court have repeatedly emphasized. "No legislative act therefore contrary to the constitution can be valid.* * * A constitution is in fact, and must be, regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body." Hamilton, *Federalist No. 78*, 524-525, 28 May 1788.

"Especially is it competent and proper for this court to consider whether [the Senate's] proceedings are in conformity with the Constitution and laws, because, living under a written constitution, no branch or department of the goverment is supreme; and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat their

acts as null and void." *Kilbourn*, 103 U.S. at 199.

"Our system of government requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch. The alleged conflict that such an adjudication may cause cannot justify the courts' avoiding their constitutional responsibility." *Powell*, 395 U.S. at 549.

If, as the Senators and their defender Courts are hoping, this Court "presum[es] that [Art. I, § 3, cl. 6 and Art. II, § 4] in the constitution [are] intended to be without effect," *Marbury v. Madison*, 5 U.S. 137, 174 (1803), such a construction

> would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void; is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. * * *
>
> That it thus reduces to nothing what we have deemed the greatest improvement on political institutions–a written constitution–would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction.

Id. at 178. In the case of such a construction, our government that "has been emphatically termed a government of laws, and not of men[,]" "will certainly cease to deserve this high appellation." *Id.* at 163.

The Speech or Debate Clause immunity that the Senators and their defender Courts are talking about would be applicable if this had been a case where Pietrangelo was challenging a Senator's vote one way or another, based on a mere allegation that the vote was untrue to the evidence. Certainly, the immunity would attach then to effectuate the broad purpose of the Clause of protecting separation of powers. However, that is squarely not the case in this situation. The votes involved in this case were *admittedly* not true, as in "matter of record" not true, as in the Senators could not keep off the television declaring how they would vote "not guilty" even though President Clinton was guilty because they did not think his perjury and obstruction of justice warranted removal. In this instance, enforcement of the Oath and Duty to Convict and Remove Clauses, whose own purposes are maintenance of the separation of powers, as explained above, would not interfere with the Speech or Debate Clause, but would complement it.

If truth be told, the Senators and their defender Courts, and perhaps this Court as well, realize the public mistake that the 32 Senators made in revealing their censure option, but excuse it or would justify it by saying that President Clinton is still subject to prosecution for perjury and obstruction of justice once he leaves office, or that the Senators' mistake is a one in a million event. However, such a cowardly argument mocks the very intent of the Founders in creating the impeachment mechanism, which was precisely to insure that "the obnoxious officer might [not] be, continued in power, and the injury sustained by the nation [not] be renewed or increased[.]" Rawle, *View*, 210-219. Or, as this Court long ago put it, such an argument "cannot apply to [the president], because the Constitution admits that he may do wrong, and has provided, by the proceeding of impeachment, for his trial for wrong-doing, and his removal from office if found guilty." *Langford,* 101 U.S. at 343.

Indeed, the Founders would have shuddered at such a ridiculous thought as the Senate and the Courts now propose of fudging on President Clinton's constitutional disgrace simply to avoid any resulting embarrassment or difficulty to themselves, or this Country. The Founders did not compromise on liberty, undoubtedly because they had fought so hard and sacrificed so much to win it (unlike the Senators and their defender Courts, who freely partake of it). "The dignity and stability of government in all its branches, the morals of the people and every blessing of society, depends so much upon an upright and skillful administration of justice." John Adams, *Thoughts on Government*, April 1776.

"A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice . . . are absolutely necessary to preserve the advantages of liberty, and to maintain a free government: The people . . . have a right to require of their law-givers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

* * *

It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice." Massachusetts Constitution 1780.

"[To establish Justice] must for ever be one of the great ends of every wise government. . . * * * [I]n a free government it lies at the very basis of all its institutions. Without justice being freely, fully, and impartially administered, neither our persons, nor our rights, nor our property, can be protected. And if these, or either of them, are regulated by no certain laws . . . and are redressed, when violated, by no certain remedies, society fails of all its value; and men may as well return to a state of savage and barbarous independence." Story, *Commentaries*, vol. 1, § 482.

The Founders wrote the Constitution to say that "the President *shall* be removed from office on impeachment and conviction." While people like President Clinton might "define" "shall" differently, "shall" means "must." The Senate, therefore, simply had no choice but to remove President Clinton from office because two-thirds of them believed him guilty of the impeachment acts. To hold otherwise would demonstrate the Constitution to be a joke–not worth the paper on which it is written.

ARGUMENT 3

Failure of this Court to address and remedy the Court of Appeals' erroneous decision will undermine forever this Court's credibility and authority and its role as "defender" of the Constitution.

At its very heart, this case is about oaths and words–who keeps theirs, and who does not. This Nation already knows that President Clinton and the Senators do not keep their oaths and words. The ultimate question is whether this Court keeps theirs.

Since the very beginning of this Country, this Court has styled itself "defender of the Constitution." This Court has preached, again and again, and yet again, with absolute unhesitancy, that the United States is a "government of laws, and not of men," *Marbury*, 5 U.S. at 163; that "no man in this country is so high that he is above the law," *United States v. Lee*, 106 U.S. 196, 200 (1882); and that there is "equal justice under law." But while this Court has been tested in the application of that standard by various species of lawlessness and injustice throughout the succeeding two hundred years, and risen to the occasion, it has really never faced the situation of being confronted with the paradigmatic tyranny against which our entire system of government stands in opposition--the tyranny of the single

individual usurping the power of the people. No president, not even Nixon or Jackson, has ever set himself, his own interests against those of the Nation with impunity–until now.

President Clinton went above the law for personal gain, unlike Jackson who acted for ideological reasons, and then, unlike Nixon who ultimately "bent to the majesty of the law" by resigning, President Clinton decided to engage in a game of "chicken" with the impeachment process. Clinton knew, perhaps from his having raped Juanita Broaddrick with impunity when he was Arkansas attorney general, that cowardice is a common enough trait even in a democracy and that, by virtue of the power of his office, he could easily withstand any efforts to hold him accountable (as long as he had no shame to feel embarrassed) simply by not leaving the office. He knew that, when push came to shove, he could depend on the enormous cost and difficulty of enforcing the impeachment process as designed by the Founders, to deter men and women like the Senators and their defender Courts from acting to remove him–men and women who, unlike the Founders, have freely enjoyed the fruits of liberty and have never had to develop and have never developed the stomach for fighting for what is right and hard-won. President Clinton, former constitutional law professor, had read this Court's *Nixon v. U.S.* opinion at 237 and knew that the other side would blink, so he did not. That his actions would mock and render meaningless and laughable the very document he swore an oath to uphold, he cared not a whit–such disregard for everything and everyone else for himself being the very essence of tyranny, and the very instrument by which dictators in other countries flourish.

Now, President Clinton has come to the last line of accountability–this Court, the very people who have sworn to defend the Constitution. The very people who have boldly stated that

> Under our system the *people*, who are [in England] called *subjects*, are the sovereign. Their rights, whether collective or individual, are not bound to give way to a sentiment of loyalty to the person of the monarch. The citizen here [in the United States] knows no person, however near to those in power, or however powerful himself, to whom he need yield the rights which the law secures to him when it is well administered.
>
> * * *
>
> [The law] is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

United States v. Lee, 106 U.S. at 220 (emphasis in the original). If this Court, if you Justices, now fail to enforce the "very specific, express requirements," *Nixon*, 506 U.S. at 234, of the Oath and Duty to Convict and Remove Clauses, in face of clear violations by the Senators, under the transparent excuse that they are protected by Speech or Debate Clause immunity, you will legitimize President Clinton's profound abuse of the public trust, and you will invite disrespect forever for the very Compact of our Democracy.

While your denial of certiorari in this case would attract little if any attention, in a society that does not mind a rapist for a president, *YOU* would know your hypocrisy, and you would know that, when the real test came, you failed. Never again would you be able to speak of "rule of law" with any credibility or authority–your words would ring hollow. And while you would have the *power* to deny review, you would not have the *right*, since justice has never been about power, but about law and equality.

CONCLUSION

Pietrangelo believes that the Constitution is "words we live by," and not "words we laugh at"; that this Court is the "defender" of the Constitution, not the "pretender"; and that George Washington should be smiling from the grave, not George III. If he is wrong in that belief, deny certiorari.

The Petition for a Writ of Certiorari should be granted.

/s/_____
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Pro Se

APPENDIX A

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 99-3415

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[Filed March 31, 2000]

JAMES E. PIETRANGELO, II)		
	)	ON APPEAL FROM
Plaintiff-Appellant,	)	THE UNITED
	)	STATES DISTRICT
	)	COURT FOR THE
v.	)	NORTHERN DISTRICT
	)	OF OHIO
UNITED STATES SENATE	)	
	)	**MEMORANDUM**
Defendant-Appellee.	)	**OPINION**

BEFORE: NELSON, BOGGS, and NORRIS, Circuit Judges.

PER CURIAM. Plaintiff, James E. Pietrangelo, II, appeals from an order of the district court dismissing his lawsuit for declaratory relief. His complaint was predicated upon the failure of the Senate of the United States to convict President William Jefferson Clinton and remove him from office, following his

impeachment trial. The district court based its decision upon the immunity conferred upon members of the Senate by Article I, § 6, of the United States Constitution.

Having carefully considered the record on appeal, the briefs of the parties, and the applicable law, we are not persuaded that the district court erred in dismissing plaintiff's lawsuit.

Because the reasoning which supports judgment for defendants has been articulated by the district court, the issuance of a detailed written opinion by this court would be duplicative and serve no useful purpose. Accordingly, the judgment of the district court is **AFFIRMED** upon the reasoning employed by that court in its order filed on March 17, 1999.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Filed March 17, 1999]

James E. Pietrangelo, II,	)	**CASE NO. 1:99 CV 323**
	)	
Plaintiff,	)	**JUDGE PATRICIA A.**
	)	**GAUGHAN**
vs.	)	
	)	
United States Senate,	)	**Order**
	)	
Defendant.	)	

Plaintiff, James E. Pietrangelo, II, filed this Complaint for Declaratory Relief against the United States Senate, Individually and Together Sitting as a Court of Impeachment, relative to the Impeachment Trial of President William Clinton in the United States Senate. Plaintiff seeks relief in the form of a declaration from this Court that "it would be unconstitutional for a Senator to not vote to convict President Clinton when he or she believes or finds that President Clinton has committed the acts charged. . ." Further, plaintiff requests that "the Court declare that perjury and obstruction of justice are 'high Crimes and Misdemeanors' for which a President may be convicted and removed from office."

Plaintiff filed an Amended Complaint for Declaratory Judgment following the acquittal of President Clinton by the Senate.

Plaintiff requests that this Court declare that those Senators who voted to acquit President Clinton did so unconstitutionally and that President Clinton was actually convicted of the charges. Therefore, plaintiff requests that this Court declare that the Senate "should have ordered and adjudged that President Clinton was convicted."

The Speech or Debate Clause of the United States Constitution, Article I, Section 6, Clause 1, provides that "The Senators and Representatives shall. . .for any Speech or Debate in either House. . .not be questioned in any other Place." This "separation of powers safeguard secures against executive or judicial interference the processes of the nation's elected representatives leading up to the formation of legislative policy and the enactment of laws." *McSurely v. McClellan*, 753 F.2d 88, 105 (D.C. Cir. 1985) (citations omitted). This Clause "extends absolute immunity to members of Congress for 'voting. . ." *Id.* The Clause, "designed to preserve the independence and integrity of the Legislative Branch, has been read broadly to effectuate its purposes, including within its protective sweep those activities which are generally done in a session of the House by one of its members in relation to the business before it." *McSurely v. McClellan*, 553 F.2d 1277 (D.C. Cir. 1976), citing *United States v. Johnson*, 383 U.S. 169 (1966) and *Kilbourn v. Thompson*, 103 U.S. 168 (1880).

Pursuant to the Speech or Debate Clause this case is hereby dismissed.

IT IS SO ORDERED.

/signed/

PATRICIA A. GAUGHAN
United States District Judge

(2)

No. 99–1781

Supreme Court, U.S.
FILED
MAY 25 2000
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1999

JAMES E. PIETRANGELO, II, PETITIONER,

v.

UNITED STATES SENATE, ET AL., RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS UNITED STATES SENATE, ET AL. IN OPPOSITION TO THE PETITION FOR CERTIORARI

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MAY 2000.

QUESTIONS PRESENTED

1. Whether the court of appeals erred in affirming the district court's application of the Speech or Debate Clause (art. I, sec. 6, cl. 1) to dismiss this action, which seeks to question the Senate and its Members about their votes in President Clinton's impeachment trial.

2. Whether plaintiff's lack of Article III standing and the constitutional commitment to the Senate of the sole power to try impeachments (art. I, sec. 3, cl. 6) provide alternative bases for dismissing this action challenging the Senate's acquittal of President Clinton.

In the Supreme Court of the United States

OCTOBER TERM, 1999

NO. 99–1781

JAMES E. PIETRANGELO, II, PETITIONER,

v.

UNITED STATES SENATE, ET AL., RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS UNITED STATES SENATE, ET AL. IN OPPOSITION TO THE PETITION FOR CERTIORARI

Respondents United States Senate and all Members of the Senate submit this brief in opposition to the petition for a writ of certiorari filed by petitioner James E. Pietrangelo, II.

STATEMENT OF THE CASE

This petition arises out of a complaint filed in the United States District Court for the Northern District of Ohio on February 10, 1999, while the Senate, pursuant to Article I, Section 3, Clause 6 of the Constitution, was trying the impeachment of President Clinton. The complaint sought declaratory and injunctive relief concerning the Senate's conduct of the impeachment trial. Three weeks after the Senate acquitted the President and adjourned the trial, the plaintiff amended his complaint to add all Senators as defendants and to challenge particular Senators' votes on the two articles of impeachment.

Specifically, the plaintiff alleged that at least thirty-two Senators who voted "not guilty" nevertheless demon-

strably believed, as evidenced principally by their support of a resolution of censure, that the President in fact had committed the offenses charged by the House of Representatives in the articles of impeachment. Amended Complaint at 4. On this basis the plaintiff sought a declaratory judgment that the Senate had "actually convicted" President Clinton. *Id.* at 8. The plaintiff predicated his standing on assertions that the Senate's acquittal of the President had deprived the plaintiff of his rights, as a citizen, to the "rule of law, equal protection and justice, due process, and democracy." *Id.* at 6, 7, 8.

Acting *sua sponte*, the district court dismissed the amended complaint on March 17, 1999, on the basis that the Constitution's Speech or Debate Clause, Article I, Section 6, Clause 1, affords Members of Congress absolute immunity for their votes. App. to Cert. Petition at 4a. The plaintiff then noticed an appeal to the United States Court of Appeals for the Sixth Circuit. While his appeal was pending, the plaintiff filed a petition for certiorari before judgment, which this Court denied on June 14, 1999. *Pietrangelo v. United States Senate*, 119 S. Ct. 2359 (1999) (No. 98–1790). On March 31, 2000, the Sixth Circuit affirmed the district court's dismissal "upon the reasoning employed by that court." App. to Cert. Petition at 2a. This second petition for certiorari timely followed on May 9, 2000.

REASONS FOR DENYING THE WRIT

The petition for a writ of certiorari should be denied because it fails to provide a "compelling reason," Sup. Ct. Rule 10, for this Court to review the judgment of the court of appeals. The Sixth Circuit properly affirmed the district court's inescapable determination that the Speech or Debate Clause provided an absolute bar to this lawsuit. Had the Speech or Debate Clause not provided a basis for dismissing this action, principles of both Article III standing and the political question doctrine would also have prohibited reaching petitioner's claims. The clear application of these settled legal principles means that this

case does not present the sort of unresolved "important question of federal law" that should be "settled by this Court" through a grant of certiorari. *Id.*

I. The Speech or Debate Clause provides that "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." U.S. Const. art. 1, § 6, cl. 1. The amended complaint alleges that thirty-two Senators violated their constitutional oath when they voted "not guilty" on the two articles of impeachment then pending before the Senate. This claim patently seeks to question Members of the Senate about their votes in exercising their exclusive constitutional duty "to try all Impeachments." U.S. Const. art. 1, § 3, cl. 6.

Contrary to petitioner's assertion that the applicability of the Speech or Debate Clause to Members' votes in an impeachment proceeding is an "open" question, Cert. Petition at 14, the Court has long recognized that legislative immunity absolutely protects from civil liability Members' "act of voting." *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1881); *accord Gravel v. United States*, 408 U.S. 606, 624 (1972). Voting in an impeachment trial is "an integral part of the deliberative and communicative processes by which Members participate in . . . House proceedings . . . with respect to other matters which the Constitution places within the jurisdiction of either House." *Id.* at 625.

Accordingly, in affirming the district court's dismissal of this case based on the Constitution's "'absolute immunity to members of Congress for [] voting,'" App. to Cert. Petition at 4a (quoting *McSurely v. McClellan*, 753 F.2d 88, 105 (D.C. Cir.), *cert. denied*, 474 U.S. 1005 (1985)), the Sixth Circuit correctly joined the other courts that have recognized that "[t]he Speech and Debate Clause prevents us from questioning Congress about actions taken in the impeachment process." *In re Request for Access to Grand Jury Materials*, 833 F.2d 1438, 1446 (11th Cir. 1987); *accord Hastings v. United States Senate, Impeachment Trial Committee*, 716 F. Supp. 38, 42 (D.D.C.)

(Gesell, J.), *aff'd on other grounds*, 887 F.2d 332 (D.C. Cir. 1989) (table).

II. The district court and the court of appeals properly disposed of this case based upon legislative immunity because the Speech or Debate Clause protects Members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (per curiam); *see Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 511 n.17 (1975). Had the Speech or Debate Clause not provided respondents with absolute immunity, both principles of Article III standing and the political question doctrine would have independently precluded this action.

On its face, petitioner's asserted injury—that respondents deprived him of his rights as a citizen to the "rule of law, equal protection and justice, due process, and democracy," Amended Complaint at 6, 7, 8—exemplifies a "generalized grievance[] about the conduct of government" that fails to satisfy the requirements of Article III. *Flast v. Cohen*, 392 U.S. 83, 106 (1968); *see Allen v. Wright*, 468 U.S. 737, 751, 753–56 (1984); *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Suing as a self-described "mere 'citizen,'" Cert. Petition at 6, petitioner's expressions of concern about "government corruption and lawlessness," *id.* at 5, and protecting "the very foundation of our democracy," *id.* at 4, are precisely the sort of allegations of "abstract injury in nonobservance of the Constitution" that the Court has held insufficient to confer standing under Article III. *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 220–27 & n.13 (1974). The district court therefore lacked jurisdiction over the complaint.

Further, petitioner's request for judicial review of Senators' votes in an impeachment trial presents a nonjusticiable political question, given the Constitution's "textually demonstrable constitutional commitment," *Baker v. Carr*, 369 U.S. 186, 217 (1962), to the Senate of the "sole Power to try all Impeachments," U.S. Const. art. 1, § 3, cl. 6. *See Nixon v. United States*, 506 U.S. 224 (1993).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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MAY 2000.

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